IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Government Appeal No. 1900 of 2001
(Old No. 760/1999)

State of Uttaranchal ...Applicant/appellant

Versus

1. Multan S/o Fattu
2. Sumer S/o Fattu
3. Kunwar Pal S/o Multan
4. Jogendra S/o Multan .....Respondents

Sri Nandan Arya, learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

This is an application to grant the special leave to appeal against the judgment and order of 20.11.1998 passed by the Addl. Chief Judicial Magistrate in the Criminal Case No. 164 of 1998 u/s 323 and 325 I.P.C.

As per the prosecution case on 14.05.1985 at about 8:00 pm when the complainant was constructing a wall over his land, the respondents came at the spot with sticks in their hands. The respondents case with the common intention to kill the complainant. In pursuance of the said common intention, they hurled abuses upon the complainant and the complainant was obstructed by them to construct the said wall but when the complainant said that he is constructing the said wall upon his own land, they did not hear the complainant and the complainant raw away from the spot. The respondents ran behind the complainant and hurled the abuses and started beating him with sticks. The complainant sustained the injuries on his person. He was medically examined by Doctor and thereafter, report was lodged and the investigation was conducted by the Investigating Officer and he submitted the chargesheet against the respondents.

After appraisal of the entire evidence, the learned Magistrate acquitted the accused-respondents on the ground that the complainant lodged an F.I.R. Ex-Ka7 before the police immediately

and thereafter he submitted the report to the S.S.P., Saharanpur. Firstly, the report was lodged u/s 323 I.P.C. only. Later on certain exaggerated averment was made and thereafter the case was registered under the cognizable offence. The learned Magistrate observed that there is discrepancy with regard to the incident in the first F.I.R. and the subsequent report submitted to the S.S.P. He also pointed out that the prosecution adduced the eyewitness PW2-Deep Chandra who had stated that the incident took place at 11:00 am. The trial court has referred page-3 of his cross examination while the incident took place at about 8:00 am. The learned Magistrate further found that the said witness was informed after the incident and he had stated that when he reached at the spot, the accused had already left the place of the occurrence. The learned Magistrate doubted his presence at the spot. The learned magistrate further discarded the evidence of PW3-Siraju who was said to be the eyewitness. The learned Magistrate had stated that his statement was recorded after inordinate delay. There was no occasion to seek the explanation from the Investigating Officer as to why the said delay had been caused because the Investigating Officer was not examined before the trial court. The learned Magistrate further observed that there is a discrepancy in the evidence of PW3-Siraju with regard to the place of incident. As such, the testimony of the said witness was discarded. It was also stated by PW4-Gopal @ Bhopal that he sustained the injuries by Sameru thereafter he fell on the ground unconscious. He could not say who caused the injuries on him. The other contradictions were also recorded by the trial court. The learned A.G.A. contended that medical report was not considered while acquitting the respondents. The perusal of the record reveals that the learned Magistrate had discarded the oral evidence and as such merely on the basis of the medical evidence, the accused cannot be convicted. It is well settled principle of law if two views are possible then only that view will be taken into

consideration by the appellate court at the time of the passing of the order in appeal against the acquittal which has been taken by the trial court because the trial court had an opportunity to see the demeanor of the witnesses as well as conduct of the witnesses. It is pertinent to mention that the lower court's record was summoned from the trial court and it is reported that the lower court's record had been weeded out. I am completely in agreement with the findings recorded by the learned Magistrate and I do not find that this is a case where special leave may be granted.

In view of the above, the learned Magistrate was justified in acquitting the accused, therefore, the permission to grant the special leave to appeal is refused. The appeal also stands dismissed.

(J.C.S. Rawat, J.)

15th May, 2006
Shiv